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## SENATE BILL No. 524

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.5.

**Synopsis:** Sales tax on vending machine items. Provides that certain exemptions from the state gross retail tax, except for an exemption for the sale of newspapers, do not apply to wholesale sales of tangible personal property to vending machine operators for resale through a vending machine. Provides that in such a transaction, the wholesaler is not considered a retail merchant making a retail transaction for purposes of collecting and remitting the state gross retail tax. Provides that the vending machine operator that purchases the tangible personal property is responsible for remitting the state gross retail tax due on the transaction. Provides that the state gross retail tax is imposed on the amount of the gross retail income received by the wholesaler in the transaction multiplied by 120%. Provides that a wholesaler must provide periodic reports on sales to vending machine operators to the department of state revenue. Requires the department of state revenue to submit a report to the governor, the budget director, and the legislative council not later than March 1, 2009, that compares: (1) the total amount of state gross retail and use taxes remitted by vending machine operators during the calendar year ending December 31, 2003; and (2) the average of the total annual amounts of state gross retail and use taxes remitted by vending machine operators during the five calendar years beginning January 1, 2004, and ending December 31, 2008. Provides that the new reporting requirements and new method of calculating the state gross retail and use tax liability of vending machine operators expire July 1, 2009, if the amount of taxes collected during the calendar year ending December 31, 2003, exceeds the average annual amount collected during the five year period ending December 31, 2008.

**Effective:** Upon passage; January 1, 2004.

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January 23, 2003, read first time and referred to Committee on Finance.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 524

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE  
2       AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3       JANUARY 1, 2004]: **Sec. 39. Except for the exemption under**  
4       **section 17 of this chapter for sales of newspapers, an exemption**  
5       **under this chapter does not apply to a transaction described in**  
6       **IC 6-2.5-7.5.**

7       SECTION 2. IC 6-2.5-6-7, AS AMENDED BY P.L.192-2002(ss),  
8       SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9       JANUARY 1, 2004]: **Sec. 7.** Except as otherwise provided in  
10      IC 6-2.5-7, **IC 6-2.5-7.5**, or in this chapter, a retail merchant shall pay  
11      to the department, for a particular reporting period, an amount equal to  
12      the product of:

13           (1) six percent (6%); multiplied by

14           (2) the retail merchant's total gross retail income from taxable  
15           transactions made during the reporting period.

16      The amount determined under this section is the retail merchant's state  
17      gross retail and use tax liability regardless of the amount of tax he



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1 actually collects.

2 SECTION 3. IC 6-2.5-7.5 IS ADDED TO THE INDIANA CODE  
3 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
4 JANUARY 1, 2004]:

5 **Chapter 7.5. Collection and Remittance of State Gross Retail**  
6 **Tax on Vending Machine Items**

7 **Sec. 1.** As used in this chapter, "tangible personal property"  
8 means goods, wares, merchandise, or other property. The term  
9 does not include cigarettes, cigars, or other tobacco related  
10 products.

11 **Sec. 2.** As used in this chapter, "vending machine" means a  
12 mechanical or an electronic device or a receptacle designed:

13 (1) to receive a coin or currency; and

14 (2) to dispense tangible personal property in return for the  
15 insertion or deposit of the coin or currency.

16 **Sec. 3.** As used in this chapter, "vending machine operator"  
17 means a person that sells tangible personal property through a  
18 vending machine.

19 **Sec. 4.** As used in this chapter, "wholesaler" means a person  
20 that makes a wholesale sale of tangible personal property to a  
21 vending machine operator for resale through a vending machine.

22 **Sec. 5. (a)** This section applies to a transaction involving the  
23 wholesale sale of tangible personal property to a vending machine  
24 operator for resale by the vending machine operator through a  
25 vending machine.

26 (b) Notwithstanding IC 6-2.5-4-2(a), a wholesaler is not a retail  
27 merchant making a retail transaction when the wholesaler makes  
28 a sale to which this section applies.

29 (c) In a transaction to which this section applies, the vending  
30 machine operator shall remit to the department the amount of  
31 state gross retail tax due on the transaction, as calculated under  
32 subsection (d), that would otherwise be collected and remitted by  
33 the wholesaler. The vending machine operator shall remit the tax  
34 due under this section to the department in the manner and on a  
35 form prescribed by the department.

36 (d) For a transaction to which this section applies, the vending  
37 machine operator shall remit to the department an amount equal  
38 to the product of:

39 (1) six percent (6%); multiplied by

40 (2) the total gross receipts generated in the transaction and  
41 received by the wholesaler, multiplied by one hundred twenty  
42 percent (120%).



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The amount determined under this section is considered the state gross retail tax liability of the vending machine operator.

(e) A wholesaler that makes a wholesale sale to one (1) or more vending machine operators under this section during a period, the duration of which shall be determined by the department, shall submit to the department a report concerning the sales for the period, in the manner and on a form prescribed by the department. A report under this subsection must include the following:

(1) The total gross receipts received from each vending machine operator during the reporting period.

(2) The retail merchant certificate number of each vending machine operator to whom the wholesaler made a wholesale sale during the reporting period.

(3) Any other information that the department requires.

Sec. 6. In administering this chapter, the department may allow:

(1) a vending machine operator to report and remit the tax determined under section 5(d) of this chapter; or

(2) a wholesaler to file the informational report required under section 5(e) of this chapter;

in conjunction with filing periodic returns under IC 6-2.5-6.

Sec. 7. The department may adopt rules under IC 4-22-2 to implement this chapter and to enable the department to gather the data required to be reported under section 8 of this chapter. Rules adopted under this chapter may require a vending machine operator or a wholesaler to report on its periodic returns or reports under this chapter an industry code contained in the current edition of the North American Industry Classification System Manual - United States published by the National Technical Information Service of the United States Department of Commerce.

Sec. 8. (a) Not later than March 1, 2009, the department shall submit a report to the governor, the director of the budget agency, and the legislative council concerning the implementation of this chapter. The report must include a comparison of:

(1) the total amount of state gross retail and use taxes remitted by vending machine operators during the calendar year ending December 31, 2003; and

(2) the average of the total annual amounts of state gross retail and use taxes remitted under this chapter by vending machine operators during the five (5) calendar years beginning January 1, 2004, and ending December 31, 2008.

(b) In compiling the information required under subsection (a),

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the department may rely on the following:

(1) Periodic returns filed by vending machine operators during the calendar years described in subsection (a).

(2) Reports filed by wholesalers under section 5(e) of this chapter during the calendar years described in subsection (a)(2).

(3) Any other information the department requires a vending machine operator or wholesaler to report under this chapter.

(c) If the department determines that:

(1) the total amount of state gross retail and use taxes collected from vending machine operators during the calendar year ending December 31, 2003, as reported under subsection (a)(1); minus

(2) the average total amount of state gross retail and use taxes collected from vending machine operators during the five (5) years described in subsection (a)(2);

is greater than zero (0), this chapter expires July 1, 2009.

SECTION 4. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "department" refers to the department of state revenue.

(b) Notwithstanding IC 6-2.5-7.5-7, as added by this act, the department shall adopt any rules to implement IC 6-2.5-7.5, as added by this act, in the same manner as emergency rules are adopted under IC 4-22-2-37.1. Any rules adopted under this SECTION must be adopted not later than September 1, 2003. A rule adopted under this SECTION expires on the earlier of:

(1) the date a rule is adopted by the department under IC 4-22-2-24 through IC 4-22-2-36 to implement IC 6-2.5-7.5, as added by this act; or

(2) January 1, 2005.

(c) This SECTION expires January 1, 2005.

SECTION 5. An emergency is declared for this act.

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